

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2854 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

CHETANBHAI MOHANBHAI PATEL

Versus

POLICE COMMISSIONER

Appearance:

MR NL PATEL for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/11/1999

ORAL JUDGEMENT

#. The petitioner came to be detained under the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Surat, on 11th February, 1999, in exercise of powers under sub-section (1) of Section 3 of the PASA Act. The grounds of detention indicate that the petitioner was indulged in bootlegging activities. One offence is registered against him under the Prohibition

Act. Statements of two witnesses are recorded indicating two incidents dated 20th December, 1998 and 23rd January, 1999, where the petitioner is alleged to have assaulted the witnesses to facilitate the bootlegging activity. In these two incidents, public order was disturbed as per the satisfaction recorded by the detaining authority. The detaining authority, therefore, recorded a satisfaction about the genuineness and correctness of incident narrated by and apprehension expressed by the witnesses and exercised powers under Section 9(2) of the PASA Act by not disclosing the names of the witnesses.

#. The petitioner has challenged the detention order on various grounds, namely, that the subjective satisfaction recorded by the detaining authority for exercising powers under Section 9(2) of claiming privilege is arbitrary, mala fide and not genuine. This has resulted into deprivation of the petitioner in making an effective representation which is his constitutionally guaranteed right. It is also contended that the petitioner is involved only in one offence relating to prohibition and, therefore, the subjective satisfaction about disturbance in public order is also not well founded. It is, therefore, urged that the petition may be allowed.

#. Mr. N.L. Patel, learned advocate appearing for the petitioner, submitted that the petitioner is involved only in one offence under the Prohibition Act and, therefore, as has been held in the case of Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City, A.I.R. 1989 SC 491, it cannot be said that it has affected public order and, therefore, the subjective satisfaction recorded by the detaining authority is suffering from a legal defect. He submitted further that the same view is adopted by this Court while deciding Special Civil Application No.6083 of 1997 (between Chandubhai Govanbhai Patel and Police Commissioner) decided on 19th December, 1997. He, therefore, urged that the petition may be allowed.

#. Mr. H.H. Patel, learned Assistant Government Pleader appearing for the respondents, submitted that the decisions relied upon by Mr. N.L. Patel would not be applicable. He submitted that the statements of two witnesses have been considered by the detaining authority and a subjective satisfaction is recorded; and that the apprehension and the facts stated in the statement are correct and genuine and, therefore, the petition may be dismissed.

#. Apart from the arguments advanced by Mr. N.L. Patel, a glaring feature that ensurfaces is that the detaining authority stated in the grounds of detention that considering the statements of witnesses, a situation of public disorder and terror had prevailed at the time of the incidents. The public around the place of incident had started running helter skelter out of fear. The shops, houses and stalls were closed down and the public life was disturbed because of the conduct of the petitioner for facilitating his bootlegging activities.

Now, if the narration of the statements as recorded in the grounds of detention is considered, the narration in respect of incident dated 20th December, 1998 indicates that the witness was passing by the den of the petitioner. At that time, some person, who had come to purchase liquor teased a girl. The witness, therefore, rebuked that person, as a result, the petitioner and 2-3 other persons approached the witness and abused him and gave him some thrashing. The witness shouted for help, but nobody intervened out of fear of the petitioner. But people around quietly went away and the witness had to beg pardon from the petitioner. Thereafter, the witness was let off after administering a threat by the petitioner. In this narration, there is nothing to indicate that the public order was disturbed or the even tempo of public life was disturbed. There is nothing to indicate that any other member of the public other than the petitioner was even involved in the transaction. The subjective satisfaction and reason, therefore, lack support on factual aspect rendering the order based on lit vulnerable to the charge of non-application of mind.

It would be proper at this stage to consider the concept of Public Order. The Apex Court in Pushker Mukherjee v. State of West Bengal, AIR 1970 SC 852, observed that :

"...It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder." "The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large." "A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Prevention

Detention Act but a disturbance which will affect public order comes within the scope of the Act."

The above decision was again considered by the Apex Court in the case of Piyush Kantilal (supra). It is, thus, clear that in the incident dated 20th December, 1998, by no stretch of imagination, can it be said that there was disturbance to public order because of any action on part of the petitioner. The result is that the detaining authority committed an error while recording the subjective satisfaction that the action of the petitioner on the two dates, namely, 20th December, 1998 and 23rd January, 1999, resulted into disturbance in public order. The recording of subjective satisfaction by the detaining authority regarding such incidents and then exercising the powers of detention as well as of claiming privilege of not disclosing the names of the witnesses has resulted in denial of right of making an effective representation. This would render the detention order illegal. The petition would, therefore, be allowable on this ground alone.

#. At this stage, Mr. N.L. Patel does not press decision on other points.

#. In view of the above discussion, the petition deserves to be allowed and the same is hereby allowed. The order of detention dated 11th February, 1999, passed by the detaining authority in respect of the petitioner-Chetanbhai Mohanbhai Patel is hereby quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L. DAVE, J.]

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